SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Soldiers Creek / Seminole Softball Club, Inc. Priority Use Agreement

DEPARTMENT: Leisure Services **DIVISION:** Parks and Recreation

AUTHORIZED BY: <u>Joe Abel</u> CONTACT: <u>Steve Waring</u> EXT: <u>2001</u>

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a Special Priority Use Agreement with Seminole Softball Club, Inc. and to further approve the mutual termination of the existing Special Priority Use Agreement.

District 2 Michael McLean

Joe Abel

BACKGROUND:

Seminole Softball Club, Inc. has used Soldiers Creek Park since 1983 under a priority use agreement to pay the fees established by the Board of County Commissioners. Seminole County Leisure Services and Seminole Softball Club, Inc. would like to terminate this existing agreement and execute an agreement to enter into a partnership that allows for Seminole County Leisure Services to provide youth girls recreational softball in partnership with Seminole Softball Club, Inc. This partnership will include an 80%/20% split of all gross revenue from league play. Also included in this priority use agreement is the option for Seminole Softball Club, Inc. to either pay the facility fees as approved by the Board of County Commissioners or pay an 80%/20% split of all tournament gross revenue.

STAFF RECOMMENDATION:

Staff recommends the Board approve and authorize the Chairman to execute a Special Priority Use Agreement with Seminole Softball Club, Inc. and to further approve the mutual termination of the existing Special Priority Use Agreement.

ATTACHMENTS:

- 1. Agreement
- 2. Mutual Termination of Special Priority Use Agreement

Additionally Reviewed By:

County Attorney Review (Ann Colby)

SPECIAL PRIORITY USE AGREEMENT

this special priority use agreement is made and entered into this _____ day of _____, 20____ between SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 E. First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY", and SEMINOLE SOFTBALL CLUB, INC., a Florida non-profit organization, whose mailing address is Post Office Box 196475, Winter springs, Florida 32719-6475, hereinafter referred to as "SOFTBALL CLUB".

NOW, THEREFORE, in further consideration of the mutual covenants and promises stated herein between the COUNTY and SOFTBALL CLUB, the parties hereby agree as follows:

SECTION 1. SPECIAL PRIORITY USE. The COUNTY does hereby grant a special priority use to SOFTBALL CLUB for the COUNTY owned premises known as the Softball Fields at Soldier's Creek Park. Said special priority use shall allow SOFTBALL CLUB to reserve the use of said premises prior to said use being offered to any other party. Provided, however, that SOFTBALL CLUB shall exercise said reservation only during the reservation period to be established by the COUNTY. SOFTBALL CLUB shall have the right to reserve said premises for any date during each year pursuant to this document, provided the right is exercised during said reservation period. In the event SOFTBALL CLUB fails to exercise said right during said period, the COUNTY shall have the right to reserve said premises for the use of parties other than SOFTBALL CLUB.

SECTION 2. SERVICES TO BE PROVIDED BY SOFTBALL CLUB.

- (a) SOFTBALL CLUB, upon consent and approval of the Leisure Services Director or his designee, shall be on the site at all times reasonably necessary for the performance of the job responsibilities specified by this Agreement.
- (b) SOFTBALL CLUB, at its sole cost, will administer criminal background checks for SOFTBALL CLUB's coaches and volunteers. Background checks must be completed prior to the first day of working with participants.
- (c) SOFTBALL CLUB will provide additional equipment as necessary to ensure safe and proper play, including uniforms, first aid, ice and water.
- (d) SOFTBALL CLUB is responsible for all promotional and registration materials necessary for its program and events taking place at Soldier's Creek Park.
- (e) SOFTBALL CLUB shall provide a quality program at Soldier's Creek Park which must be acceptable to and approved in advance by the COUNTY's Leisure Services Director, whose determination of acceptance shall be final. If performance is not acceptable, the league may be canceled.
- (f) SOFTBALL CLUB will make all necessary pre-league arrangements such as preparing and assembling needed materials and equipment, coaches' training, communication with parents and practice/game schedules.
- (g) SOFTBALL CLUB will keep an accurate record of participant registrations, session dates, gross/net receipts total, and percentage

total and report same to the COUNTY as requested by the COUNTY's Leisure Services Director.

- (h) SOFTBALL CLUB will secure release forms and provide the COUNTY's Leisure Services Department with copies of registration and release forms signed on forms approved by the COUNTY.
- (i) SOFTBALL CLUB will provide the COUNTY's Leisure Services Department with schedules at least fourteen (14) days prior to start of program. Any changes must be submitted with seven (7) days advance notice. All scheduling must be approved by the COUNTY prior to starting of programs.
- (j) SOFTBALL CLUB is responsible for coordinating with the COUNTY's Leisure Services Department to ensure program does not interfere with events of the COUNTY or the public. Program must yield to events/needs of the COUNTY, notwithstanding the provisions of this Agreement.
- (k) SOFTBALL CLUB will be responsible for hiring of all staff or recruiting of volunteers needed to have proper ratios.
- (1) Any sponsorships will be obtained by SOFTBALL CLUB and must be approved by the COUNTY.
- (m) SOFTBALL CLUB agrees to make all required tax and insurance payments arising from this Agreement, including, but not limited to, FICA, FIT and unemployment compensation insurance.
- (n) Any tax obligation arising from additional employees will be the responsibility of SOFTBALL CLUB.
- (o) SOFTBALL CLUB further agrees to conduct itself in such a manner as to advance good relations for the COUNTY and its citizens

and ensuring that its officers, employees, contractors, agents and volunteers shall do likewise.

- (p) SOFTBALL CLUB further agrees to control and conduct demeanor and appearance of employees, agents, representatives, customers and patrons. Upon objection by the COUNTY's Leisure Services Director concerning the conduct, demeanor or appearance of any such person, SOFTBALL CLUB shall immediately take all necessary steps to correct the course of such objection.
- (q) SOFTBALL CLUB shall not conduct any business or activity at Soldier's Creek Park not specifically authorized by this Agreement, unless approved by the COUNTY.
- (r) SOFTBALL CLUB shall contract exclusively with the COUNTY for its program services and no other club or organization without the written approval of the COUNTY.

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SECTION 3. SERVICES TO BE PROVIDED BY THE COUNTY.

- (a) The COUNTY will be responsible for the registration and collection of fees from each participant in all of SOFTBALL CLUB's classes/programs at Soldier's Creek Park unless otherwise agreed upon or specified.
- (b) The COUNTY will provide the use of softball fields owned by the COUNTY for SOFTBALL CLUB's practice, leagues and tournament purposes.
- (c) The COUNTY will maintain its softball fields and equipment in good working condition and any maintenance or repairs will be corrected in a timely manner by the COUNTY.

(d) The COUNTY will provide promotion/advertising for the SOFTBALL CLUB's classes/programs at Soldier's Creek Park through the COUNTY's web site and the COUNTY's leisure service guide.

SECTION 4. REVENUE SHARING. The COUNTY and SOFTBALL CLUB shall share all SOFTBALL CLUB's program revenues generated at Soldier's Creek Park with the COUNTY to receive twenty percent (20%) of the revenue and SOFTBALL CLUB to receive eighty percent (80%) of the revenue. The COUNTY shall be responsible for the collection and accounting for such revenue and shall submit to SOFTBALL CLUB its eighty percent (80%) on a monthly basis no later than the 15th day of each month.

SECTION 5. TERM. This Agreement shall be effective as of January 1, 2008, notwithstanding the date it is executed by the parties, and shall terminate on July 30, 2009.

SECTION 6. HOLD HARMLESS. SOFTBALL CLUB agrees to hold harmless, indemnify and defend the COUNTY and its commissioners, officers, employees and agents against any and all claims, losses, damages or lawsuits for damages arising from, allegedly arising from or related to SOFTBALL CLUB's use of Soldier's Creek Park or exercise of SOFTBALL CLUB's rights under this Agreement.

SECTION 7. INSURANCE.

- (a) <u>General</u>. SOFTBALL CLUB shall, at SOFTBALL CLUB's own cost, procure the insurance required under this Section.
- (1) SOFTBALL CLUB shall furnish the COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Workers' Compensation/Employer's Liability and Commercial General Liability).

The COUNTY, its officials, officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by SOFTBALL CLUB, SOFTBALL CLUB shall provide the COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

- (2) The Certificate shall contain a statement that it is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement. In lieu of the statement on the Certificate, SOFTBALL CLUB shall, at the option of the COUNTY, submit a sworn, notarized statement from an authorized representative of the insurer that the Certificate is being provided in accordance with this Agreement and that the insurance is in full compliance with the requirements of this Agreement. The Certificate shall have this Agreement number clearly marked on its face.
- (3) In addition to providing the Certificate of Insurance, if required by the COUNTY, SOFTBALL CLUB shall, within thirty (30) days after receipt of the request, provide the COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.
- (4) Neither approval by the COUNTY nor failure to disapprove the insurance furnished by SOFTBALL CLUB shall relieve SOFTBALL CLUB of SOFTBALL CLUB's full responsibility for performance of

any obligation including SOFTBALL CLUB's indemnification of the COUNTY under this Agreement.

- (b) <u>Insurance Company Requirements</u>. Insurance companies providing the insurance under this Agreement must meet the following requirements:
- (1) Companies issuing policies other than Workers' Compensation must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.
- (2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.
- (3) If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority, (ii) no longer comply with Section 440.57, Florida Statutes, or (iii) fail to maintain the requisite Best's Rating and Financial Size Category, SOFTBALL CLUB shall, as soon as SOFTBALL CLUB has knowledge of any such circumstance, immediately notify the COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as SOFTBALL CLUB has replaced the unacceptable insurer with an insurer acceptable to the COUNTY, SOFTBALL CLUB shall be deemed to be in default of this Agreement.

(c) <u>Specifications</u>. Without limiting any of the other obligations or liability of SOFTBALL CLUB, SOFTBALL CLUB shall, at SOFTBALL CLUB's sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this Section. Except as otherwise specified in this Agreement, the insurance shall become effective prior to the commencement of work by SOFTBALL CLUB and shall be maintained in force until this Agreement's completion date. The amounts and types of insurance shall conform to the following minimum requirements.

(1) Workers' Compensation/Employer's Liability.

(A) SOFTBALL CLUB's insurance shall cover SOFTBALL CLUB for liability which would be covered by the latest edition of the standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance without restrictive endorsements. SOFTBALL CLUB will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both SOFTBALL CLUB and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable Federal or State laws.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen and Harbor

Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

\$ 500,000.00	(Each Accident)
\$1,000,000.00	(Disease-Policy Limit)
\$ 500,000.00	(Disease-Each Employee)

(2) Commercial General Liability.

(A) SOFTBALL CLUB's insurance shall cover SOFTBALL CLUB for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by SOFTBALL CLUB (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

LIMITS

General Aggregate	Three (3) Times the
	Each Occurrence Limit
Personal & Advertising	\$1,000,000.00
Injury Limit	
Each Occurrence Limit	\$1,000,000.00

(d) <u>Coverage</u>. The insurance provided by SOFTBALL CLUB pursuant to this Agreement shall apply on a primary basis and any other insurance or self-insurance maintained by the COUNTY or the COUNTY's officials, officers, or employees shall be excess of and not contributing with the insurance provided by or on behalf of SOFTBALL CLUB.

- Occurrence Basis. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis.
- (f) Obligations. Compliance with the foregoing insurance requirements shall not relieve SOFTBALL CLUB, its employees, or agents of liability from any obligation under this Section or any other portions of this Agreement.

SECTION 8. THIRD PARTY USE OF PREMISES. Nothing herein shall prevent the reservation or use of the Soldier's Creek Park by parties other than SOFTBALL CLUB.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes stated herein.

SEMINOLE SOFTBALL CLUB, INC.
By: MARTIN REISS, President
Date:
BOARD OF COUNTY COMMISSIONERS SEMINOLE COUNTY, FLORIDA
By: BRENDA CAREY, Chairman Date:
As authorized for execution by the Board of County Commissioners at their, 20, regular meeting.

County Attorney

AEC/lpk

1/16/08

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MUTUAL TERMINATION OF SPECIAL PRIORITY USE AGREEMENT

THIS MUTUAL TERMINATION of Agreement is made and entered into
this day of, 20, by and between SEMINOLE
SOFTBALL CLUB, INC., whose mailing address is P.O. Box 196475, Winter
Springs, Florida 32719-6475, hereinafter referred to as "SOFTBALL
CLUB", and SEMINOLE COUNTY , a political subdivision of the State of
Florida, whose address is Seminole County Services Building, 1101 East
First Street, Sanford, Florida 32771, hereinafter referred to as
"COUNTY".
WITNESSETH:
WHEREAS, on March 13, 2006, the parties entered into an Agreement
for special priority use of Soldier's Creek Park; and
WHEREAS, the parties have chosen to enter into a new agreement
for use of Soldier's Creek Park, with significantly different terms,
NOW, THEREFORE,
1. SOFTBALL CLUB and COUNTY hereby agree that the Special
Priority Use Agreement issued on March 13, 2006, as amended on April
3, 2007, is hereby terminated.
2. The parties agree that no obligations are due each other
under said Agreement.
IN WITNESS WHEREOF, the parties hereto have made and executed
this Agreement on the date below written for execution by the COUNTY.
ATTEST: SEMINOLE SOFTBALL CLUB, INC.
TONI HARDY, Secretary By: MARTIN REISS, President
(CORPORATE SEAL) Date:

	SEMINOLE COUNTY, FLORIDA
MARYANNE MORSE Clerk to the Board of County Commissioners of Seminole County, Florida.	By:BRENDA CAREY, Chairman Date:
For the use and reliance of Seminole County only.	As authorized for execution by the Board of County Commissioners at their,20
Approved as to form and legal sufficiency.	regular meeting.
County Attorney	

BOARD OF COUNTY COMMISSIONERS

ATTEST:

AEC/lpk 1/30/08



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